

**Issue:** Applicability of Tax - Sale or Lease

	)	No.
	)	
	)	
Claimant	)	
	)	
v.	)	
	)	
	)	
DEPARTMENT OF REVENUE	)	Karl W. Betz
OF THE STATE OF ILLINOIS	)	Administrative Law Judge
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It is the position of the Department that the 1987 transaction was a lease situation only (Dept. Ex. 1, pp. 2, 6), and the May, 1989, titling of the vehicle was pursuant to purchase subjecting to Use Tax liability.

The Department's file in this matter was entered into evidence as its Exhibit Number 1 and this was admitted under certification of the Director of Revenue. (Tr. 6).

XXXXX offered legal argument and testified on behalf of his position.

After reviewing the record, I recommend this matter be resolved in favor of the Department.

#### FINDINGS OF FACT:

1. Claimant, as lessee, entered into a lease transaction with , as lessor, on October 16, 1987, the subject of said transaction being a 1988 Chevrolet Caprice, VIN . (Dept. Ex. 1, pp. 8, 14-15).

2. There is no documentary evidence in the record to establish the 1987 lease was a security agreement. (Tr. 4-12).

3. The introduction of the Notice of Department's Tentative Determination of Claim established the prima facie case of the Department. (Dept. Ex. 1, p. 2).

CONCLUSIONS OF LAW: The Department denied Claimant's claim in 1989 on the grounds that the registration and titling of the vehicle in name in May, 1989, was pursuant to a sale to him from . This denial was based upon the documents the Department had obtained from both and the Illinois Secretary of State, as the VEHICLE INVOICE (Dept. Ex. 1, p. 17) shows a sale of the vehicle on 5/23/89 from to . Because the Revenue Tax Acts made the sale of a used vehicle by a leasing company a retail sale subject to Illinois Use Tax on the part of the purchaser (Ill. Rev. Stat., 1987, ch. 120, pars. 439.1a and 440c), I find it was proper and correct for the Department to deny claim on the basis he was liable for the tax.

In filing the claim, the Claimant has the burden of proof to establish that there was a "mistake of law or fact" in the payment of the tax. By provision of 35 ILCS 120/7, "It shall be presumed that all sales of tangible personal property are subject to tax under this Act until the contrary is established, and the burden of proving that a transaction is

not taxable hereunder shall be upon the person who would be required to remit the tax to the Department if such transaction is taxable. " In interpreting this provision, courts of this State have consistently held that one who is claiming the benefit of an exemption or deduction has the burden of proving that he is entitled to it, and all doubts are to be resolved against the Claimant. *Pedigo v. Department of Revenue* (1982) 105 Ill. App.3d 759. Illinois Courts have held that in order to rebut the Department's prima facie case in an administrative hearing, the burden of the taxpayer is to introduce competent documentary evidence tied to its books and records, and testimony not accompanied by supporting documents is not sufficient. *DuPage Liquor Store, Inc. v. McKibbon* (1944), 383 Ill. 276; *Copilevitz v. Department of Revenue* (1968), 41 Ill.2d 154. In the instant case, the testimony of Taxpayer Claimant cannot serve to negate the liability.

While contends the 1987 transaction was actually a sale and the lease was a security agreement, this position is not supported by the documents in the record. The Uniform Commercial Code, 810 ILCS 5/9-302(d), requires a filing to perfect a security interest in a motor vehicle that is required to be registered. The record reveals the 1987 title registration was not done in a manner to show that held a security interest in the vehicle.

Section 3-203 of the Illinois Vehicle Code (625 ILCS 5/3-203) requires that when an owner creates a security interest in a vehicle, that owner is to file with the Secretary of State an application to name the lienholder on the Certificate of Title. The 1987 title (Dept. Ex. 1, p. 8) shows the lienholder to be the , who was the lender who financed the acquisition by , and is shown and identified on the title as the owner and lessor, with identified as lessee. Also, there is no indication in the record that the alleged security interest was perfected pursuant to the requirements of 625 ILCS 5/3-202.

Claimant here points to the latter part of the U.C.C.'s definition of security interest (Ill. Rev. Stat. 1987, ch. 26, par. 1-201(37)) wherein it

covers how a lease can be one intended for security agreement when the lessee has an option to purchase for a nominal amount.

However, there is no such written option in the lease agreement. The lease does require 24 monthly rental payments and then return of the vehicle to the lessor by the lessee, but there is no reference to a lessee buy out for a nominal amount. (Dept. Ex. 1, pp. 14-15).

Claimant asks for the lease transaction to be treated as a security agreement because that was what the parties intended, and claimant also asks that the he paid the lessor for the vehicle in 1989 be treated as nominal consideration.

I cannot agree to ignore the written documents already in the record because, as noted above, it is Claimant's burden to produce documents to support his position. I also make no finding that is a nominal sum.

RECOMMENDATION: Based upon the aforementioned Findings of Fact and Conclusions of Law, I recommend the Department's denial of this claim be upheld.

Karl W. Betz  
Administrative Law Judge